

UNITED STATES DISTRICT COURT
THE DISTRICT OF MASSACHUSETTS

FILED
U.S. DISTRICT COURT
DISTRICT OF MASS.

SUFFOLK, SS

DOCKET NUMBER 1:05-CV-11349-RCL 11:26

RICHARD LIVINGSTON *

Plaintiff, Pro Se *

Vs. *

M.B.T.A. Employees Credit Union *

Defendant *

Plaintiff's Opposition to
Defendant's Motion to Strike
Portions of Plaintiff's
Affidavit
LOCAL RULE 56.1

Pursuant to Local Rule 55.1 the Plaintiff, Pro Se, Richard Livingston opposes the Defendant, MBTA Employee's Credit Unions, Motion to Strike Portions of the Affidavit of Plaintiff, Pro Se, Richard Livingston because, the procedure for bringing an opposition for Summary Judgment is set out in L.R. 56.1 ; the litigants are directed by Honorable Reginald C. Lindsay to be guided by the Local Rules, not Fed. R. Civ. P 56(e).

Specifically, the Defendant seeks to strike Exhibits 6, 8, 9, 10, 11, 12, 13, 14, 16, 18, 20, 21, 22, and 23 from Plaintiff, Livingston's Affidavit for the following reasons:

- 1.) "they have not been properly authenticated
- 2.) they contain facts that are irrelevant, inadmissible hearsay and/or inadmissible evidence; and/or
- 3.) Livingston is not competent to testify to the matters stated therein, as required by Mass. R. Civ. P 56(e)".

Defendant, MBTA Employees Credit Union's Memorandum in Support of Defendants Motion to Strike argues, "relevance and authenticity of documents have not been established".

Plaintiff Answer: Relevance / Inadmissible Hearsay / Authenticity / Competency

Relevancy:

All evidence/documents presented by the Plaintiff are relevant to logically conclude that the Plaintiff assertive fact is more plausible or have been produced to disprove facts, in controversy presented by Defendant. *(SEE Fed. R. of Evidence, Rule 401)*

Inadmissible Hearsay:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation,unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. *(SEE Fed. R. of Evidence, Rule 803 (6) Hearsay Exceptions, Records of Regularly Conducted Activity).*

Authentication or Identification:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what is proponent claims. *(SEE Fed. R. of Evidence, Rule 901 (a) Requirement of Authentication or Identification)*

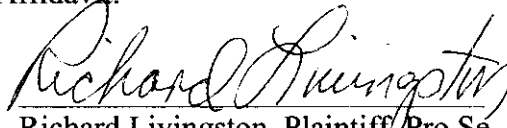
Competency:

Authentication is a problem involving a question of 'competency' which must be resolved by preliminary fact finding and decision-making by the Trial Judge, or whether it involves a question of conditional relevancy which requires

that the judge only insure that a *prima facie* case is made before leaving the matter to the jury to resolve. (See S. Saltzburg & M. Martin, *Federal Rules of Evidence Manual* 478 (5th ed. 1990))

WHEREFORE, The Plaintiff, Pro Se, Richard Livingston request this Honorable court to Deny the Defendant, MBTA Employees Credit Union's, Motion to Strike Portions of the Plaintiff's Affidavit.

Date August 28, 2006

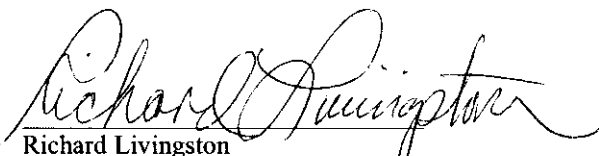

Richard Livingston, Plaintiff, Pro Se,
149 Warren Avenue
Milton, Massachusetts 02186-2009

617-698-4333 HM

Attached: Certificate of Service

CERTIFICATE OF SERVICE

I, Richard Livingston, Plaintiff, Pro Se hereby swear and affirm that I have this day August 28, 2006 notified Peter C. Netburn, Esq. of Hermes, Netburn, O'Connor & Spearig, P.C. 265 Franklin Street, Seventh Floor Boston, MA 02110-3113 legal representative for MBTA Employees Credit Union, Defendant {MBTA Employees Credit Union, South Boston, Massachusetts} by United States Postal Service Hermes, Netburn, O'Connor & Spearig, P.C. 265 Franklin Street, Seventh Floor Boston, MA 02110-3113

Date August 28, 2006 
Richard Livingston
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Milton Massachusetts 02186-2009

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